

WESTERN STATES CONTRACTING ALLIANCE
MASTER PRICE AGREEMENT
for
COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES
IBM CORPORATION

Number A63311

This Agreement is made and entered into by IBM Corporation, 4263 Commercial Street, Salem, OR, 97302, ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

RECITALS

WHEREAS, the State has the need to purchase and the Contractor desire to sell; and,

WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided. No type of Lease transactions are allowed through this Agreement.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

1. Definitions

"Announced Promotional Price" are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

"Contract" means an agreement for the procurement of items of tangible personal property or services.

"Contract Administrator" means an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

"Contractor" shall mean successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

"Consumables" that are required for the operation of Equipment offered or supplied are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

"CPV Member" is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

"CPV Program" The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

"Cumulative Volume Discount" means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement.

"Customer-set-up Machine" is an IBM Machine that the Purchasing Entity installs according to IBM's instructions.

"Date of Installation" is the following:

1. For an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it, or, if the Purchasing Entity defers installation, makes it available to the Purchasing Entity for subsequent installation by IBM;
2. For a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
3. For a Program –
 - a. basic license, the later of the following:
 - (i) the day after its testing period ends; or
 - (ii) the second business day after the Program's standard transit allowance period,
 - b. copy, the date (specified in a Transaction Document) on which IBM authorizes the Purchasing Entity to make a copy of the Program, and
 - c. chargeable component, the date the Purchasing Entity distributes a copy of the chargeable component in support of the Purchasing Entity's authorized use of the Program.

"Documentation" refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

"E-Rate" is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

"Educational Discount Price" means the price offered in a nationally announced promotion, which is limited to educational customers only, as defined by the Contractor.

"Energy Star®" is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

"Enterprise" is, if the Purchasing Entity is a state or a state agency, institution or department, the state of the Purchasing Entity; if any other political subdivision (colleges, school districts, counties, cities, etc.,) the Enterprise is the political subdivision.

"Equipment" means workstations, desktop, laptop (includes Tablet PC's), and handheld (PDA) devices, servers, computing hardware, including upgrade components such as memory, storage drives, and spare parts.

"FCC" means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

"General Price Reduction Price" means the price offered to consumer, business or governmental purchaser at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

"ISO 14001" is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to www.iso.org.

"Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

"Licensed Internal Code" (called "LIC") is Machine Code used by certain Machines IBM specifies (called Specific Machines).

"Machine" is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that IBM may provide to the Purchasing Entity.

"Machine Code" is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine.

"Mandatory" The terms "must" and "shall" identify a mandatory item or factor.

"Manufacturer" means the company that designs, assembles, and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer's name(s) shall appear on the computer equipment. The Contractor shall provide warranty service and maintenance for equipment covered by this Agreement as well as a Takeback Program.

"Master Price Agreement" means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price agreement. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

"Materials" are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that IBM may deliver to the Purchasing Entity as part of a Service. The term "Materials" does not include Programs, Machine Code, or LIC.

"Materials Management Division" or "MMD" means the procurement office for the State of Minnesota or a designated representative.

"NASPO" means the National Association of State Procurement Officials

"Participating Addendum" means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

"Non-IBM Program" is a Program licensed under a separate third party license agreement

"Other IBM Program" is an IBM Program licensed under a separate IBM license agreement, e.g., IBM International Program License Agreement.

"Participating State" or **"Participating Entity"** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

"PDA" means a Personal Digital Assistant. Refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which are later entered into a larger computer. **NOTE: For this Agreement, all Tablet PC's are NOT considered PDA's.**

"Peripherals" include but are not limited to storage, printers (including multifunction network print/fax/scanner devices), scanners (used in conjunction with computing equipment), monitors, keyboards, uninterruptible power supplies and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. A third party may manufacture peripherals. The Contractor shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

"Per Transaction Multiple Unit Discount" means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

"Political Subdivision" means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

"Price Agreement" means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

"Procurement Manager" means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

"Product(s)" means personal computer equipment, peripherals, LAN hardware Software, and Network Storage devices, but not unrelated services.

"Products and Services Schedule Prices" mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

"Program" is the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;
2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and
4. related licensed materials.

The term "Program" includes any IBM Program, or Non-IBM Program that IBM may provide to the Purchasing Entity. The term does not include Machine Code, LIC, or Materials.

"Purchase Order" means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

"Purchasing Entity" means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

"Services" are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

"Servicing Subcontractor" or **"Reseller Agent"** or **"Subcontractor"** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.**

"Specifications" is a document that provides information specific to a Product. IBM provides an IBM Machine's Specifications in a document entitled "Official Published Specifications."

"Specified Operating Environment" is the Machines and programs with which a Program is designed to operate, as described in the Program's Specifications.

"Standard Configurations" mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

"State Procurement Official" means the director of the central purchasing authority of a state.

"Storage Solution/Auxiliary Storage" means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

"Takeback Program" means the Contractor's process for accepting the return of the equipment or other products at the end of life.

"Trade In" refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

"Travel" means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

"Universal Resource Locator" or "URL" means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

"WSCA" means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

2. Scope of Work

The Contractor, or its approved subcontractor, shall accept purchase orders from and deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. Title Passage

The Contractor must pass unencumbered title to any and all products purchased under this Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is

available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

4. Permissive Price Agreement and Quantity Guarantee

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. Order of Precedence

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

6. Payment Provisions

All payments under this Agreement are subject to the following provisions:

A. Acceptance

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. Acceptance shall occur contemporaneous with passage of title as stated in paragraph 3 above.

B. Payment of Invoice

1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments are due upon receipt and payable within thirty (30) days, or in accordance with the applicable laws of the Purchasing Entity.
2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made via a Purchasing Entity's "Purchasing Card".
3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes.

Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

D. Invoices

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration. Invoices shall match the line items on the Purchase Order.

7. Agreement Term

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota or on September 1, 2004, whichever is later, through August 31, 2007 (3 years). The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

D. The Contractor's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. Non-Appropriation

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available

shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order, except for Services already performed or Products already delivered.

10. Shipment and Risk of Loss

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.
- C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days by a reliable and insured shipping company.

11. Warranties

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties. In general, the Contractor warrants that:
 - 1. The Product will conform with the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
 - 2. The Product will meet any specifications provided in writing to or otherwise actually know by the Contractor when it advised the Purchasing Entity in writing about the Product's ability to meet those mandatory specifications.
 - 3. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
 - 4. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
 - a) Warranty for IBM Machines
 - b) Warranty for IBM Programs
 - c) Warranty for IBM Services
 - d) Warranty for Systems
- B. If Contractor modifies the warranties described in Exhibit A, even 10 days prior written notification to the Contract Administrator, the State may terminate the Contract at its sole discretion because a unilateral change in warranty terms may be contrary to the State's best interests. Such a termination is considered caused by the unilateral action of the Contractor and not by the State's protection of its interests.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

For purposes of this section, the term "Product" includes Materials, Machine Code and LIC.

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against (a) any claim that any Product provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and (2) any claim arising from any alleged trade secret misappropriation by Contractor in the United States or Puerto Rico, and Contractor shall pay all costs, damages and attorneys' fees that a court finally awards or that are included in a settlement approved by Contractor as a result of any such claim. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
1. Give the Contractor prompt written notice of any claim;
 2. Allow the Contractor to control the defense or settlement of the claim; and
 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

- B. If any Products become, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

1. Provide a Purchasing Entity the right to continue using the Products;
2. Replace or modify the Products or Services so that it becomes non-infringing; or
3. Accept the return of the Products or give the Purchasing Entity a credit equal to: a) for a Machine, the Purchasing Entity's net book value provided it has followed generally-accepted accounting principles; b) for a Program, the amount paid by the Purchasing Entity or 12 months charges (whichever is less); and c) for Materials, the amount paid by the Purchasing Entity to IBM for the creation of the Materials.

This is IBM entire obligation to the Purchasing Entity regarding any claim of infringement.

- C. IBM has no obligation regarding any claim based on any of the following:

1. Anything the Purchasing Entity provides which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by the Purchasing Entity or by a third party on the Purchasing Entity's behalf;
2. The Purchasing Entity's modification of a Product, or a Program's use in other than its Specified Operating Environment;
3. The combination, operation or use of a Product with other products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation of use of a Product for the benefit of a third party outside the Purchasing Entity's Enterprise; or
4. Infringement by a non-IBM Product or an Other IBM Program alone.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Per Transaction Multiple Unit Discount Price, or Standard Configuration Price. Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products:
- Band 1: File/Print Servers, Mid-Range Servers

Band 2: Desktops, Laptops
Band 3: Printers, High speed; Medium speed; Desktop; Laptop
Band 4: Storage Solutions
LAN equipment and related software.
General Purpose Software

- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.

B. Addition of units/configurations

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

17. Take back/Environment/Energy Efficiency Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Take back/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.
- C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.
- D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

18. Product Delivery

Contractor agrees to use commercially reasonable efforts to delivery Products to Purchasing Entities within 10 - 14 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

21. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

22. Use of Servicing Subcontractors

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

23. Payments to Subcontractors

For Minnesota transactions, in the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any

such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

24. Indemnification

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees.

25. Amendments

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

26. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

27. Severability

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

28. Enforcement of Agreement/Waivers

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

29. Web Site Maintenance

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product

specifications and other aids in accordance with reasonable instructions provided by the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.

- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

30. Equal Opportunity Compliance

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which it's primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

31. Limitation of Liability

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder, loss of, or damage to data, lost profits, business, revenue, goodwill, or anticipated savings even if the Contractor has been advised of the possibility of such damages. Both parties agree that this Contract does not create any right or cause of action for any third party against the other except for third party claims that fit within the indemnification provision of this Contract.

32. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

33. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

34. Release

Each party, upon final payment of the amount due under this Agreement, releases the other, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41. Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

35. Data Practices

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- D. The Contractor agrees to be bound by any statutorily required data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.
- E. Notwithstanding the above, the parties agree that any confidential information required to be exchanged will be done so under the terms of a signed confidentiality agreement. See attached Exhibit D.

36. Organizational Conflicts of Interest

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
 - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
 - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
 - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

37. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

38. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

39. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

40. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

41. Survival

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisition Management Specialist
50 Sherburne Avenue
112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996

Email: bernie.kopischke@state.mn.us

To Contractor:

IBM Corporation
James Schroeder
WSCA National Program Manager
IBM Global Government Systems
4263 Commercial St. SE, Suite 100
Salem OR 97302
Fax: 503.399.3793 (TL 284)
Email: jschroed@us.ibm.com

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 43. The carrier for mail delivery and notices shall be the agent of the sender.

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.

8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
 1. Consistent nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
 1. Exercise any remedy provided by law or equity;
 2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
 3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
 4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

46. Audits

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
 1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

49. Ownership

Prior to the issuance of a purchase order, the Contractor will specify Materials to be delivered to the Purchasing Entity and will identify them as being "Type I Materials," "Type II Materials," "Type III", or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

A. Ownership of Documents/Copyright for Type III Materials. Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State, and described in the Contract as a Type III Material, shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.

B. Rights, Title and Interest. Along with ownership of the materials, any and all copyrights in the copyrightable material will be assigned to the State. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where so agreed, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, or patents.

C. Definition of Material Types

Type I Materials are those, created during the Service performance period, in which the Purchasing Entity will have all right, title, and interest (including ownership of copyright). Contractor will retain one copy of the Materials. The Purchasing Entity grants Contractor 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on, Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which Contractor or third parties have all right, title, and interest (including ownership of copyright). Contractor will deliver one copy of the specified Materials to the Purchasing Entity. Contractor grants the Purchasing Entity an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within the Purchasing Entity's Enterprise only, copies of Type II Materials.

Type III Materials are those, created during the project, which you will own (including ownership of copyright). No license is granted to IBM with respect to Type III Materials. However, both parties are free to use any ideas, concepts, know-how, or techniques which are developed or provided by the other or jointly by both parties during a project. Both parties are free to enter into similar agreements with others and to develop and provide Materials or Services which are similar to those provided under this Agreement.

50. Prohibition Against Gratuities

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

51. Antitrust

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

52. Right to Publish

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. Performance While Dispute is Pending

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

54. Hazardous Substances

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.

55. Customer Satisfaction/Complaint Resolution

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

56. Value Added Services

The Contractor is expected to provide such services as installation, training, and software imaging for ordering by the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

57. E-Rate Program

The Contractor's E-Rate identification number is SPIN #143005607

The Universal Service Administrative Company (USAC) maintains an Eligible Services List on its web site that categorizes services as (a) eligible for discounts, (b) not eligible for discounts, or (c) conditionally eligible for discounts (i.e., depending on details of how a service or component is utilized). The current listing of eligible services and products can be found at <http://www.sl.universalservice.org/reference/eligible.asp> and is current as of 10/13/2003. The SLD has indicated that there will be another update before the end of 2003.

To the extent IBM's participation in the E-rate program is consistent with its corporate strategy and direction, the Contractor shall continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

1. IBM CORPORATION

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: James C. Schroeder

Title: IBM WSCA/NASPO NATIONAL Pgm. Mgr.

Date: AUGUST 23, 2004

By: _____

Title: _____

Date: _____

2. MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopschke

Title: Acquisition Management Specialist

Date: 8/24/04

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Brenda Willard

Date: 8/24/04

EXHIBIT A - ADDITIONAL WARRANTIES

A. Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications. The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange Service for the Machine, without charge, under the type of Service IBM designates for the Machine. If a Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so or 2) replace it with one that is at least functionally equivalent, you may return it to IBM and your money will be refunded.

B. Warranty for IBM Programs

IBM warrants that each warranted IBM Program, when used in the Specified Operating Environment, will conform to its Specifications. The warranty period for a Program expires when its Program Service are no longer available. During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted Program for at least one year following its general availability. If a Program does not function as warranted during the first year after you obtain your license and IBM is unable to make it do so, you may return the Program and your money will be refunded. To be eligible, you must have obtained your license while Program Services (regardless of the remaining duration) were available for it.

C. Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document.

D. Warranty for Systems

Where IBM provides Products to you as a system, IBM warrants that they are compatible and will operate with one another. This warranty is in addition to IBM's other applicable warranties.

E. Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by you, or failure caused by a product for which IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

F. Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects. IBM will identify IBM Machines and Programs that it does not warrant.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EXHIBIT B - COMPLAINT RESOLUTION

A. Hardware and Software Support 1-800-IBM-SERV

1. The IBM support organization's goal is to ensure customer satisfaction by:
 - a. Responding to your calls within targeted guidelines.
 - b. Providing ongoing communication regarding your problem status through problem resolution.
 - c. Taking ownership of your call for support.
 - d. Providing a defined escalation process when management assistance is needed.
 - e. Maintaining our commitment to continuous improvement of our service processes.
2. IBM support gives you the ability to contact IBM and ask installation and usage related questions as well as make defect inquiries about eligible products. You have the option of voice (1-800-IBM-SERV) or electronic access (<http://www.ibm.com/support>) to a team of technical specialists. Support is available 24 hours per day, 7 days per week, 365 days per year.
3. For all eligible products, IBM can help you with:
 - a. General Support:
 - Usage and installation questions
 - Product compatibility and interoperability questions
 - Interpretation of product documentation
 - Diagnostic information reviews to help isolate the cause of a problem
 - Configuration samples
 - IBM and multivendor database searches
 - Planning information for software fixes
 - Defect Support
 - b. Electronic Support:
 - Submit problems and get answers electronically
 - View screens remotely
 - Submit documents electronically
 - View open problems that have been submitted
 - Search IBM's question and answer database
4. Before contacting support, you will need to gather information about the problem and have it on hand when discussing the situation with a specialist.
 - a. define the problem
 - b. gather background information
 - c. gather relevant diagnostic information
 - d. determine the business impact – assign a severity level
 - Severity 1 - Critical business impact, this indicates you are unable to use the program resulting in a critical impact on operations. This condition requires an immediate solution.
 - Severity 2 - Significant business impact, this indicates the problem is usable but is severely limited.
 - Severity 3 - Some business impact, this indicates the program is usable with less significant features (not critical to operations) unavailable.
 - Severity 4 - Minimal business impact, this indicates the problem causes little impact on operations or that a reasonable circumvention to the problem has been implemented.
5. When you call support to report an IBM software problem or update/gain status on a problem, your request will be routed to a technical specialist. For onsite support, IBM will attempt to diagnose and resolve the problem remotely before sending a technician onsite. Onsite response times vary dependent on purchased warranty and maintenance coverage options. IBM will use commercially reasonable efforts to respond by telephone to hardware and software service calls within two business hours during normal country business hours, and within two hours during off-shift hours for critical problems. Our initial response may result in resolution of your request, or it will form the basis for determining what additional actions may be required to achieve technical resolution of your request.

6. Whether you contact IBM by telephone or electronically, once logged, a unique problem management record (PMR) or Incident/Support case is created. Your PMR, Incident or Support Case is routed to a resolution team for handling. You may be transferred directly to the resolution team or your issue will be placed in a queue for call back. In either case, the next person you speak with will be a specialist in the appropriate resolution team.
7. At the resolution team level your call is researched, resolved, or escalated as appropriate. Due to the level of specialization required to maintain superior technical expertise at the team level, it is sometimes necessary to involve more than one support team in resolving a particular software problem. This is easily handled, as our support teams are all networked together and work as one to resolve whatever problems or issues arise.
8. If at any point in our service process, your expectations are not met by IBM, you may call our attention to this problem by asking to speak with a Duty Manager or by calling your local customer service executive. Escalations to an IBM manager will receive prompt attention and management focus. The Duty Manager or customer service executive will work with our technical staff to ensure your expectations are met and that your request is being handled appropriately. Further escalation procedures for complaint resolution are described in the following "IBM Complaint Management Process for Customer Complaints and Escalation Management" section of this RFP response.

B. IBM Billing and Ordering Support

1. Electronic Billing:
 - a. IBM Invoices OnLine allows you to view your invoices using an Internet browser. Once you register with us providing an e-mail address and your IBM customer numbers, you'll receive a login ID and password. Whenever new invoices are issued, you will receive an e-mail notification alerting you to this fact. You can then login to Invoices OnLine and view them. You can also search the invoice database by customer number, date range, invoice type or payment status to view previously delivered invoices.
 - b. Electronic Data Interchange (EDI) will transmit invoices electronically to you and can feed right into your inventory management and / or accounts payable systems. IBM charges no fee for electronic invoicing. If you are interested in this method contact us by calling the toll free number on the top of your invoice or by sending a note to address in the upper left corner of your invoice and we will have someone contact you regarding this option.
 - c. Eprocurement - IBM can help leverage your investment by integrating your eProcurement system with an IBM electronic catalog. We provide the catalog with the products and prices you are entitled to through your current agreement/contract with IBM. Your end users can shop for the IBM products they need and place their order electronically.
2. In the event there is a problem with your order or invoice, IBM telephone support for ordering or billing inquiries is available from 8:00 am to 8:00 pm EST, Monday through Friday, by calling 1-877-426-6006, option 2. IBM Customers with ordering inquiries also have the ability to submit an online request for order related inquiry.
3. there are two different methods available within Invoices On-Line to electronically communicate with us if you have a question, comment, or problem with an invoice. The invoice inquiry function available from Invoices On-Line automatically creates a prepopulated inquiry form that includes the customer number, invoice number, your name, account name, e-mail address and telephone number is prepopulated on the form, all you need to do is select from a list the reason for your inquiry or invoice dispute and submit the form to us. We will review your request and respond to you as quickly as possible. You can also send an e-mail to us by clicking on the "Contact Us" button.
4. Once received by the IBM customer service team (telephone or electronic), our goal is to respond to your inquiry within one business day. Most inquiries are quickly resolved. If at any point in the inquiry process, your expectations are not met by IBM, you may call our attention to this problem by asking to speak with a CSO (customer service operations) Manager. CSO Managers are assigned

geographically throughout the United States. Escalations to a CSO manager will receive prompt attention and management focus. They will work with our order and billing staff to ensure your expectations are met and that your request is being handled appropriately.

5. Further escalation procedures for complaint resolution are described in the following section.

C. IBM Complaint Management Process for Customer Complaints and Escalation Management

1. The Complaint Management Process is the business process IBM uses to manage customer complaints and escalations when "business as usual" or advertised or entitled support processes have been exercised but have failed to resolve the customer's problem in a timely manner. A customer complaint is defined as:
 - a. A request from a customer or IBMer to correct an unfulfilled customer expectation or commitment/promise.
 - b. A failure from a previous customer-IBM interaction to deliver on a commitment/expectation.
 - c. When the customer has attempted to exercise all or part of the advertised or entitled support structures to resolve a problem and is dissatisfied with its progress.
 - d. Customers may complain to an IBM executive. In these cases, these are referred to as executive complaints.
2. A critical situation is defined as:
 - a. A customer complaint that is escalated within IBM to a status of Critical. Escalation to a Critical Situation is considered when:
 - The problem is causing or is about to cause severe impact to the customer's business, or
 - Customer satisfaction has or is about to erode to the point that customer loyalty is in jeopardy, or
 - IBM determines that this problem is jeopardizing IBM's relationship with this customer and additional actions must be taken to save that relationship.
3. An alert is defined as:
 - a. A situation used primarily by the service/marketing offices to notify a pre-established list of people when a customer in that office/area has a critical product failure. This is often used for system down situations so that appropriate people are made aware of this situation and may act to resolve it.
4. A proactive situation is defined as:
 - a. A situation created internally by IBM for the purpose of complaint avoidance. When an IBM employee becomes aware of a situation which may lead to customer dissatisfaction if not addressed, they may proactively engage additional resources to resolve the problem. The customer may or may not be aware that the situation has been opened.
5. The Complaint Management Tool is a consolidated, worldwide information system that supports management of customer and executive complaints, critical situations, proactive and alert situations. It links complaint management personnel in all geographies within IBM business units, product divisions, headquarters, etc. for streamlined escalation management. The key Roles and Responsibilities of the Complaint Management Tool are:
 - a. Feedback Collector (FC), the person with initial contact with the customer.
 - Captures key customer information, such as contact information and problem description.
 - Categorizes the primary problem/issue so that the complaint can be routed to the most appropriate Resolution Owner.
 - b. Response Coordinator (RC), identifies the most appropriate RO or RTL or RA to engage in a situation when a request for assistance is made:
 - Ensures right RO/RTL from their organization is assigned.
 - Monitors progress against responsiveness indicators such as 7-day Close or Action plan, 48 hour RO acknowledgement, 48 hour RTL assignment, etc.
 - Keeps functional management informed.

- c. Resolution Owner (RO), acts as the customer advocate by serving as the primary IBM interface with the customer.
 - Contacts the customer within 48 hours to acknowledge ownership of the situation and determine the customer's conditions of satisfaction.
 - Develops and documents a customer-agreed to action plan within 7 working days of open.
 - Qualifies situations for the escalation process.
 - Engages a Resolution Team Leader and Resolution Assistants if assistance is needed to resolve the customer concerns.
 - Confirms with customer that the issue is resolved to their satisfaction and that the customer agrees to closure.
 - d. Resolution Team Leader (RTL), teams with the Resolution Owner to resolve the customer's issue:
 - Develops and manages the IBM internal resolution action plan.
 - Provides technical/organizational knowledge to help engage the right resources, including RAs.
 - Works in partnership with the Resolution Owner.
 - e. Resolution Assistant (RA), assists the RO or the RTL:
 - Performs action plan tasks.
 - Provides assistance in resolving the customer request or preventing recurrence.
 - f. Senior Executive Reviewer (SER) is the senior executive escalation process which provides:
 - Issues already escalated through worldwide customer satisfaction project offices whose resolution was not acceptable to the General Manager of the Resolution Owner's (RO) organization.
 - Situations affecting multiple customers which identify pervasive and complex issues involving multiple Divisions where the problems have not been resolved.
6. How the CM tool works to resolve customer complaints:
- a. A customer complaint is received by any customer contact person (the Feedback Collector).
 - b. The Feedback Collector records the customer's issue and contact information and categorizes the customer's primary problem. The FC requests assistance in assigning the appropriate Resolution Owner based upon the customer's issue.
 - c. The RO contacts the customer within 48 hours to acknowledge ownership, explore the customer's conditions of satisfaction, develops an action plan which may involve escalation to various levels of management across divisions, and resolves the customer complaint. If resolution assistance is needed, the Resolution Owner requests assistance for a Resolution Team Leader to be assigned within 48 hours.
 - d. The RO and the RTL document and execute the agreed-to action plan to resolve the situation.
 - e. When the customer agrees the situation is resolved, the RO closes the situation.

EXHIBIT C - VALUE ADDED SERVICES

Contact the Contractor for more details on these services and their related costs. All professional services **MUST** be related to the purchase of equipment from the Contract.

- A. **Cabling Infrastructure**
Cabling Infrastructure includes but is not limited to:
 - 1. Cat5 or greater cable
 - 2. Coax
 - 3. Fiber (SM and MM)
 - 4. All Cable trays and support materials
 - 5. Termination equipment
 - 6. IDF/MDF support (racks, termination equipment, tags, patch panels, etc.)
- B. **Network Electronics** - IBM supports all major Network Electronics vendors, but specializes in Cisco technologies.
- C. **Wireless Infrastructure**
During a typical IBM Wireless LAN engagement, IBM will conduct Site Surveys to determine installation requirements. IBM will procure, configure and perform a system test of the wireless equipment. IBM will then perform the physical installation of the wireless LAN bridge equipment at the designated site, as well as configure and test the Wireless LAN bridge equipment. Wireless LAN is defined as technology conforming to 802.11X standards.
- D. **High Bandwidth Infrastructure**
IBM provides High Bandwidth Infrastructure through a number of methods. IBM is defining this category to be "connectivity between distinct physical locations with speeds at OC3 or greater." This type of bandwidth capability is important to clients seeking an infrastructure to unify voice, video, and data over a single transport mechanism.
- E. **Data Center Services**
IBM provides a range of services for the build, move, upgrade, and/or security of a client data center. These services combine IBM labor (see rate table) with various specific service offerings or OEM technology to deliver the most comprehensive Data Center Services in the Industry.
- F. **Servers & Storage**
Servers and storage are key infrastructure components for an enterprise. Depending on the size and the client's legacy systems integration requirements, IBM offers server and storage solutions with the largest scalability in the industry. Whether in a school site or part of a data center server consolidation program, IBM can design a server/storage system, install, configure, train staff, and support that system for WSCA clients.
- G. **Operating Systems Engineering, Design, Deployment**
IBM provides a range of services for Operating Systems. From the Engineering of the build process, golden images for deployment, application testing, hardware / configuration testing to the configuration of the various services that are required to provide enterprise services from the platform.
- H. **Infrastructure Software**
IBM provides a complete suite of infrastructure software for our client's needs. IBM defines the following categories of software as Infrastructure Software and can provide IBM or third party products for each category
- I. **Web Portal**
As one of three types of information (data) that requires information transport, IBM offers a Web Portal solution through IBM's Web Connection Framework (WCF). Web Portal is the entry point for a client's information that is provided in a Browser based format to all constituencies in the enterprise. IBM takes Web capabilities to their logical application as a solution for client needs by connecting various parties to

conduct the "business" of the enterprise. IBM calls this type of activity 'e-business' and is widely credited with authoring that phrase.

J. Technical Services

Technical Services typically include the following:

1. Design/Engineering
 - a. Solution Design
 - b. Technical Engineering
 - c. Product Certified Specialists
 - d. Business and Technical services
 - e. Solution Installation
 - f. Hardware
 - g. Software
2. System Configuration
 - a. Configuration
 - b. Testing
3. Maintenance
 - a. Break/Fix Support
 - b. Software Maintenance
 - c. Network Maintenance
4. Training - Staff Training in Support of Infrastructure Solution
5. Support
 - a. Help Desk / Support Center – implement and operate support for end users.
 - b. Problem Management – reduce the number and impact of problems.
 - c. Change Management – provide smooth changes into system operations.
 - d. Knowledge Management – capture problem resolution and 'how to' procedures for reuse.
 - e. Event and Availability Management – monitoring and proactive network management, including components such as access management, configuration management, software distribution, etc.

K. Network Management Services such as Help Desk

Network Management can be handled either by installing tools on-site and run by the client technology staff (after appropriate training) or can be delivered as a remote service. Operation by client staff is covered in the procurement of Hardware, Software, and Training, therefore this section addresses remote network management specifically where the client procures a service and not the tools themselves.

IBM Remote Network Management Services is an out-tasking service for monitoring, managing and maintaining your I/T infrastructure seven days a week, twenty-four hours a day (7x24). This service is enabled by connecting the WSCA participant's network to the IBM Network Operations Center.

IBM provides network management services for active assets that reside on the network and support Simple Network Management Protocol (SNMP). These assets may be routers, switches, intelligent hubs, servers, etc.

IBM provides monthly and real-time on-line reports, as well as a secure Internet portal to view your network status in "real-time". This includes topology maps that graphically depict the managed assets within the network, thereby enabling efficient response to problems. Each month IBM reviews your reports, interprets your data and recommends improvements as required as part of the Engineering Analysis service.

Services include: Problem Management, Performance Management, Configuration Management for routers and switches, Change Management for routers and switches, and Internet Security Service.

L. Asset Management

IBM's Asset Management solutions can be provided on-site at the client location or as remotely delivered services. Our solution encompasses a closed loop set of processes to ensure that IT assets are managed from 'cradle to grave,' including procurement, tracking/operations, disposal, and associate financials. A central repository of assets is at the hub of the closed loop processes, with updates being provided by the processes that perform activity on or change the location of the asset.

M. Security

IBM delivers security solutions that help customers to assess their needs, protect data and assets, detect threats and intrusions, and recover from incidents. We even offer services to manage your security needs end-to-end. Together with our Alliance partners, IBM delivers best-of-breed IT solutions according to the industry-specific needs of any organization.

N. Training

IBM IT(Information Technology) Education Services is the largest IT training organization in the world. We deliver approximately 5,000 classes per month. IT instructional services include:

1. Solutions for innovative on-line learning technologies.
2. Resources for on-line instructional development and packaging.
3. Synchronous Tools/Techniques for On-Line Learning.
4. Classroom technologies and infrastructures.
5. Digital classroom of the future
6. Lab technologies and infrastructures.
7. Application technologies.

EXHIBIT D - CONFIDENTIALITY AGREEMENT

IBM Agreement for Exchange of Confidential Information

Our mutual objective under this Agreement is to provide protection for confidential information (Information) while maintaining our ability to conduct our respective business activities. Each of us agrees that the following terms apply when one of us (Discloser) discloses Information to the other (Recipient).

1. Disclosure

Information will be disclosed either:

- 1) in writing;
- 2) by delivery of items;
- 3) by initiation of access to Information, such as may be in a data base; or
- 4) by oral or visual presentation.

2. Obligations

Information should be marked with a restrictive legend of the Discloser. If Information is not marked with such legend or is disclosed orally, the Information will be identified as confidential at the time of disclosure.

The Recipient agrees to:

- 1) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and
- 2) use the Discloser's Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

The Recipient may disclose Information to:

- 3) its employees who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares; and
- 4) any other party with the Discloser's prior written consent.

The Recipient may disclose Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order. [We cannot promise to enter into written agreements with State employees, who are subject to collective bargaining agreements that restrict terms and conditions of employment.]

3. Confidentiality Period

Information disclosed under this Agreement will be subject to this Agreement for two years following the initial date of disclosure.

4. Exceptions to Obligations

The Recipient may disclose, publish, disseminate, and use Information that is:

- 1) already in its possession without obligation of confidentiality;
- 2) developed independently;
- 3) obtained from a source other than the Discloser without obligation of confidentiality;
- 4) publicly available when received, or subsequently becomes publicly available through no fault of the Recipient; or
- 5) disclosed by the Discloser to another without obligation of confidentiality.
- 6) required to be disclosed by applicable law, or judicial or administrative order issued by a court or administrative agency of competent jurisdiction.

The Recipient may use in its business activities the ideas, concepts and know-how contained in the Discloser's Information which are retained in the memories of Recipient's employees who have had access to the Information under this Agreement.

5. Disclaimers

THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.

The Discloser will not be liable for any damages arising out of the use of Information disclosed under this Agreement.

Neither this Agreement nor any disclosure of Information made under it grants the Recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the Discloser.

6. General

This Agreement does not require either of us to disclose or to receive Information.

Neither of us may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.

The receipt of Information under this Agreement will not in any way limit the Recipient from:

- 1) providing to others products or services which may be competitive with products or services of the Discloser;
- 2) providing products or services to others who compete with the Discloser; or
- 3) assigning its employees in any way it may choose.

The Recipient will comply with all applicable export and import laws and regulations.

Only a written agreement signed by both of us can modify this Agreement.

Either of us may terminate this Agreement by providing one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

Both of us consent to the application of the laws of the State of New York to govern, interpret, and enforce all of our rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

This Agreement is the complete and exclusive agreement regarding our disclosures of Information, and replaces any prior oral or written communications between us regarding these disclosures. By signing below for our respective enterprises, each of us agrees to the terms of this Agreement. Once signed, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:

By _____
(Authorized Signature)

Name (type of print): _____

Date: _____

Identification number: _____

Address: _____

Agreed to:

IBM/Rational Software

By _____
(Authorized Signature)

Name (type or print): _____

Date: _____

Agreement number: _____

Address: _____

After signing, please return a copy of this Agreement to the "IBM address" shown above.



WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: ONE (1)
TO CONTRACT NUMBER: A63311**

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and IBM Corporation (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. A63311, effective September 1, 2004, through August 31, 2007, to provide direct-from-manufacturer personal computer equipment and related devices, software and services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

WHEREAS, the terms of the Contract specifically state that: "MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors."

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

The printer categories currently included in Band 3, Printers are: High Speed Laser, Medium Speed Laser, Desktop Laser, and Portable (Laptop) Ink.

The following printer categories are hereby added to Band 3, Printers:

- Multi-functional - Desktop Laser
- Multi-functional - Medium Speed Laser
- Multi-functional - High Speed Laser

This Amendment is effective beginning on May 1, 2005, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect until August 31, 2007, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

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WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. IBM CORPORATION

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: James C. Schaefer

Title: IBM Marketing Executive

Date: April 28, 2005

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisition Management Specialist

Date: 5/5/05

By: _____

Title: _____

Date: _____

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Fault

Date: 5/4/05



WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: TWO (2)
TO CONTRACT NUMBER: A63311**

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and IBM Corporation (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. A63311, effective September 1, 2004, through August 31, 2007, to provide direct-from-manufacturer personal computer equipment and related devices, software and services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

The following Band and specific products within that Band are hereby removed from the Contract:

- Band 2 - Desktops, Laptops Products as follows:
 - ThinkCentre desktops
 - ThinkPad Notebooks
 - ThinkVision Monitors

This Amendment is effective beginning on July 1, 2005, and shall remain in effect until August 31, 2007, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

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WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. IBM CORPORATION

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: James C. Schneider

Title: IBM Marketing Executive

Date: May 2, 2005

By: _____

Title: _____

Date: _____

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisition Management Specialist

Date: 5/5/05

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Father

Date: 5 MAY 05



WCSA/NASPO Contract Administration

112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155

Fax: 651.297.3996, TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

ASSIGNMENT AGREEMENT

This Assignment Agreement is by and among the State of Minnesota, acting through its commissioner of Administration, on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WCSA) and other authorized Participating States and Participating Entities ("State"), IBM Corporation, 4263 Commercial Street, Salem, OR, 97302("Original Contract Vendor"), and Lenovo ("Assigned Contract Vendor").

WHEREAS, the State has an agreement with the Original Contract Vendor, Contract No. A63311, effective September 1, 2004, through August 31, 2007 ("Contract"), to provide COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES and to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided. No type of Lease transactions are allowed through this Agreement.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum, with the prior approval of the WCSA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.; and

WHEREAS, the Original Contract Vendor wishes to assign all its interests in the Contract to the Assigned Contract Vendor as they relate to the products identified herein; and

WHEREAS, the assignment provision of the Contract provides assignment of the agreement only upon written consent of the State.



WCSA/NASPO Contract Administration

112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155

Fax: 651.297.3996, TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

NOW THEREFORE, the parties agree to the following:

1. This Assignment Agreement will become effective upon its approval and execution by the parties and approval of the appropriate State officials, pursuant to Minn. Stat. § 16C.05, subd. 2.
2. The State hereby approves the request of the Original Contract Vendor to assign to the Assigned Contract Vendor all its interests, rights, responsibilities, duties, and other provisions set forth in the Contract, which is attached and incorporated as Exhibit A, for the Desktop PC and Laptop Band; specifically the ThinkCentre desktops, ThinkPad Notebooks; and ThinkVision Monitors, provided the Original Contract Vendor and the Assigned Contract Vendor agree to all provisions set forth in this Assignment Agreement.
3. The Original Contract Vendor and the Assigned Contract Vendor jointly and severally represent and warrant to the State that:
 - a. the Original Contract Vendor is not in default of any of its obligations under the Contract; and
 - b. the Original Contract Vendor has assigned to the Assigned Contract Vendor, under separate agreement, sufficient information, rights to technology, and key personnel sufficient to enable the Assigned Contract Vendor to properly perform the duties, responsibilities, obligations, and all other provisions assigned to the Assigned Contract Vendor; and
 - b. the Assigned Contract Vendor is ready, willing, and able to perform all of the duties, obligations, and responsibilities of the Contract.
4. The Assigned Contract Vendor accepts assignment of all the provisions of the Contract. And, the Assigned Contract Vendor agrees to sign a new contract, based on Exhibit A to this Assignment Agreement, for the products in the Desktop PC and Laptop Band, identified in No.



WCSA/NASPO Contract Administration

112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155

Fax: 651.297.3996, TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

5. Any and all amounts due to the Original Contract Vendor by the State for goods and/or services provided by the Original Contract Vendor prior to assign date, under the Contract will be paid to the Original Contract Vendor by the State. Any and all amounts due under the Contract on or after assign date, will be paid to the Assigned Contract Vendor by the State.
6. When applicable, payment for remaining work and travel expenses from the Contract will be paid at the rates set in the Contract. The amount to be paid to the Assigned Contract Vendor will not exceed the Contract's total costs, minus the total payments made to the Original Contract Vendor.

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WSCA/NASPO Contract Administration

112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155

Fax: 651.297.3996, TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

IN WITNESS WHEREOF, the parties have caused this Assignment Agreement to be duly executed intending to be bound thereby.

1. ORIGINAL CONTRACT VENDOR

IBM Corporation

The Original Contract Vendor certifies that the appropriate person(s) have executed this document on behalf of the Contract Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: James C. Schroeder

Title: IBM MARKETING EXECUTIVE

Date: JUNE 1, 2005

By:

Title:

Date:

2. ASSIGNED CONTRACT VENDOR

Lenovo Corporation

The Assigned Contract Vendor certifies that the appropriate person(s) have executed the Contract on behalf of the Contract Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: John R. [Signature]

Title: Lenovo Public Sector Mgr

Date: June 1, 2005

By:

Title:

Date:

3. MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisition Management Specialist

Date: 6/2/05

4. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Grande Willard

Date: 6/3/05

AMENDMENT NUMBER: THREE (3)

TO CONTRACT NUMBER: A63311

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and IBM Corporation (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. A63311, effective September 1, 2004, through August 31, 2007, to provide direct-from-manufacturer personal computer equipment and related devices, software and services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

The next to the last paragraph of Amendment Number Two (2) dealing with the effective date of Amendment No. 2 to this Contract is changed to read:

"For each Participating Entity who has not signed a Participating Addendum with Lenovo (United States) Inc., this Amendment is effective beginning on July 30, 2005, or until the Participating Entity has executed a Lenovo Participating Addendum to the Lenovo Master Price Agreement A74813, whichever occurs first. This Amendment and Amendment Number Two (2), as herein changed, shall remain in effect until August 31, 2007, or until the Contract is canceled, whichever occurs first."

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

Intentionally Left Blank

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. IBM CORPORATION

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: James C. Schroeder

Title: IBM WASHINGTON EXECUTIVE

Date: JUNE 28, 2005

By:

Title:

Date:

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisition Management Specialist

Date: 6/28/05

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By:

Date:

28 JUNE 05



WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

AMENDMENT NUMBER: 4 TO CONTRACT NUMBER: A63311

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and IBM Corporation (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. A63311, effective September 1, 2004, through August 31, 2007, to provide direct-from-manufacturer personal computer equipment and related devices, software and services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

WHEREAS, the terms of the Contract specifically state that the agreement may be amended upon agreement of both parties.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

The unit/configuration limit has been increased for the following bands that were part of the original RFP/Contracts:

Band 1 - Servers, to include pricing configurations for mid-range servers between \$50,000 and \$100,000, including file and print servers.

Band 2 - Desktop, to include high-end workstations between \$50,000 and \$100,000.

Band 4 - Auxiliary Storage, including NAS, SAN, CAS, and CNS, to include pricing configurations for mid-range storage solutions between \$50,000 and \$100,000,

This Amendment is effective beginning on January 1, 2006, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect until August 30, 2007, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

Intentionally Left Blank



WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. IBM CORPORATION

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: ASchneider

Title: WSCA/NASPO P&M Mgr

Date: 1/13/06

By: _____

Title: _____

Date: _____

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisition Management Specialist

Date: 1/18/06

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Joan Breider

Date: 1-18-06

Brenda Willard
1/18/06

**Amendment 06-02
To Participating Addendum
Computer Equipment, Software, Peripherals and Related Services
Master Price Agreement
IBM Corporation ("Contractor")
A63311
State of Washington**

In accordance with Provision 25 (Amendments) of Master Price Agreement A63311 ("the Contract"), this Amendment 06-02 is entered into by and between the State of Washington, **Department of Information Services** ("DIS") and **IBM Corporation** ("Contractor").

DIS and Contractor agree to amend the participating Addendum as follows:

1. Section 3 (*Primary Contact*) is modified by replacing Contractor contact information with the following:

The primary Contractor contact for this participating addendum is as follows:

Name: Karen Schneider
Participating Contractor: IBM Corporation
Address: 4660 La Jolla Village Drive, Suite 300, San Diego, CA 92122
Telephone: 858-597-5137
Fax : 858-587-5099
Email: kasch@us.ibm.com

2. Section 4 (*Servicing Subcontractors*) is deleted in its entirety and replaced with the following language:

Only those IBM Business Partners authorized by IBM are eligible to support the IBM WSCA/NASPO Master Price Agreement and will be identified in the individual Participating Addendum or on the individual website for the Participating Entity. IBM Business Partners are only authorized to quote to the Purchasing Entity the products and pricing specified by IBM for the WSCA/NASPO Master Price Agreement. Inclusion of the Business Partner identifier in the Purchase Order may result in a fee payment to the Business Partner. Such fee payment will not affect the pricing specified in the WSCA/NASPO Master Price Agreement.

Orders and payments are to be issued directly to IBM unless otherwise mutually agreed upon.

The Master Price Agreement Number MUST be shown on all Purchase Orders issued against this Agreement.

All other provisions of the Participating Addendum remain in full force and effect.

Additional information re: ordering, identifying Business Partners and other relevant information can be found on the IBM WSCA/NASPO web site: www.ibm.com/easvaccess.

State of Washington

Signature: *Robert M. Deshay*

Name (print) ROBERT M DESHAYE

Title ACTING ASST DIRECTOR

Date: 5-24-06

IBM Corp

Signature *James C. Schroeder*

Name: (print) JAMES C. SCHROEDER

Title: CLIENT EXECUTIVE

Date: May 8, 2006

PARTICIPATING ADDENDUM
COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED
SERVICES

MASTER PRICE AGREEMENT

IBM Corporation ("Contractor")

A63311

State of Washington

1. Scope

The **Washington State Department of Information Services ("DIS")** is the Participating State under this Participating Addendum ("PA") and through execution of this PA adopts this Master Price Agreement #A63311 ("Agreement") as a Master Contract for the state of Washington. The Request for Proposals that resulted in the award of this Agreement was posted on the web site of the Minnesota Department of Administration, with a notice and link posted on the Washington State TechMall and was advertised in the Seattle Daily Journal of Commerce three times: Friday, February 13, 2004; Saturday, February 14, 2004; and Friday, February 20, 2004.

DIS' jurisdiction for purposes of this Agreement includes any Washington State agency with properly delegated authority to purchase the Products and Services that are the subject of this Agreement, and any local government or political subdivision (including public schools, colleges or universities) of the state of Washington or eligible non-profit organization with the authority to purchase such Products or Services, who have a properly executed Customer Service Agreement (Interlocal) with DIS. This Contract is not for personal use.

2. Changes

Contractor and DIS agree to the following modifications and additions to the language of the Agreement as executed by the Lead State.

2.1. Paragraph 1 (Definitions)

- a) With regard to the definition for "Equipment," Contractor and DIS agree that only those third party Products that are incidental to the enhancement or configuration of the purchased IBM-branded Product(s) can be included under Equipment.
- b) The definition for "Peripherals" is modified to exclude any multifunction network print/fax/scanner devices that print more than 30 pages per minute from being sold under this PA. In addition, Contractor and DIS agree that only those third party Products that are incidental to the enhancement or

configuration of the purchased IBM-branded Product(s) can be included under Peripherals.

- c) The definition for “Products” is modified to exclude General Purpose Software. The only Software that is available for purchase under this Agreement is PC or server operating system software.
- d) The definition for “Services” is modified to exclude pre-implementation design and disaster recovery planning and support services.
- e) The definition for “State Procurement Official” is modified to read as follows: “State Procurement Official” means the Director of the Washington State Department of Information Services.
- f) The definition for “Travel” is deleted as no travel expenses are anticipated under this PA.

2.2. Paragraph 6 (Payment Provisions)

- a) In 6.A. (Acceptance) add the following language for the state of Washington:

If Purchasing Entity requests an acceptance testing process, Contractor and Purchasing Entity shall agree to a mutually acceptable process in or attached to the Purchase Order and title will not pass and acceptance will not occur until the Products have successfully completed the agreed upon acceptance testing procedures.

- b) In 6.B. (Payment of Invoice) add the following language for payment by Washington Purchasing Entities:

Payment shall be tendered to the Contractor within thirty (30) days after delivery of all Products on an invoice or thirty (30) days after receipt of the properly prepared invoice, whichever is later. If the Purchasing Entity fails to make timely payment, Contractor may invoice the Purchasing Entity one percent (1%) per month on the amount overdue. The Purchasing Entity shall make a good faith effort to pay within thirty (30) days of the invoice date of a properly prepared invoice. No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Agreement, except that maintenance can be paid up to one year in advance.

- c) In 6.C. (Payment of Taxes) add the following language:

Purchasing Entity will pay sales and use taxes, if any, imposed on the Products and Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor’s income or gross receipts, or personal property taxes levied or assessed on Contractor’s personal property. Purchasing Entity, as an agency of Washington State government, is exempt from property tax.

Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor’s staff shall be Contractor’s sole responsibility.

2.3. Paragraph 8 (Termination)

In 8.A. (Termination for Convenience) add the following after the first sentence:

At any time after the first anniversary date of the Agreement, DIS may terminate its PA, in whole or in part, by giving the Contractor thirty (30) days written notice.

2.4. Paragraph 20 (Records and Audit)

Add the following language for the state of Washington:

Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to protection and use of Purchasing Entity's Confidential Information, and accounting procedures and practices, for six (6) years after the expiration or termination of this PA. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the DIS Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

2.5. Paragraph 24 (Indemnification)

Modify the language so that "Purchasing Entity(ies)" is included in each place that "Participating Entity(ies)" appears.

2.6. Paragraph 35 (Data Practices)

Add the following language for the state of Washington:

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this PA or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, Purchasing Entity source code or object code, or Purchasing Entity or Washington State security information or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchasing Entity's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchasing Entity. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this PA or the pertinent transaction with Purchasing Entity, Contractor shall, at Purchasing Entity's option: (i) certify to Purchasing Entity that Contractor has destroyed all

Confidential Information; or (ii) return all Confidential Information to Purchasing Entity; or (iii) take whatever other reasonable steps Purchasing Entity requires of Contractor to protect Purchasing Entity's Confidential Information.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Contractor acknowledges that DIS and Purchasing Entities are subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be Proprietary Information, must be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, DIS and Purchasing Entities shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchasing Entity will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchasing Entity will release the requested information on the date specified.

2.7. Paragraph 44 (Reporting and Fees)

Add the following language for state of Washington:

Contractor agrees to provide monthly reports to the Washington Primary Contact. The monthly report shall include the gross Washington sales for the month just ended, excluding sales tax, subtitled by Purchasing Entity name within Washington and shall include the IBM customer number for each Purchasing Entity. The report shall be accompanied with a check payable to the Department of Information Services for an amount equal to one and one-half percent (1.5% or .015) of the gross Washington sales, excluding sales tax, for the month. The monthly report and fee shall be submitted by the last business day of the month following the month in which Contractor invoiced the Purchasing Entity. Monthly reports are required even if no activity occurred.

2.8. Paragraph 46 (Audits)

Add the following language for the state of Washington:

As a part of its Participating State function, DIS will from time to time perform audits of Purchasing Entity invoices to ensure that the invoices and that the Products and Services listed and the prices charged for the Products and Services are accurate and in accordance with the Agreement. DIS will perform these audits by selecting Purchasing Entities from an Activity Report and asking Contractor to send the invoices for those Purchasing Entities for that report period. The DIS request will be in writing, and will list the IBM customer numbers for the Purchasing Entities. Such requests will not exceed twelve (12) per year. Contractor shall ensure that DIS receives the requested invoices within thirty (30) days of Contractor's receipt of DIS' request. Contractor will be responsible for any audit exceptions or disallowed costs.

Dis will also conduct periodic spot check audits of the Prices, Products and Services listed on the website that Contractor maintains for state of Washington Purchasing Entities. DIS will communicate any discrepancies to Contractor and

Contractor agrees to correct any deficiencies within three (3) Business Days, or as otherwise agreed.

2.9. Paragraph 49 (Ownership)

All references to the "State" in this paragraph shall include the Purchasing Entity submitting the Purchase Order under which the work is conducted or the Services delivered, as applicable.

2.10. Paragraph 52 (Right to Publish)

Add the following language for the state of Washington:

Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this Agreement or any Product furnished by Contractor wherein DIS' or Purchasing Entity's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchasing Entity's name with Contractor's Products or Services may, in DIS' or Purchasing Entity's reasonable judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS or Purchasing Entity *prior* to such use.

2.11. Exhibit C (Value Added Services)

Contractor and DIS agree to delete Exhibit C for Washington State Purchasing Entities. The only Services available to Washington Purchasing Entities are those included in the definition of Services in the Agreement, as amended in section 2.1(d) of this PA.

2.12. Exhibit D (Confidentiality Agreement)

Contractor and DIS agree to delete Exhibit D for Washington State Purchasing Entities. The protection of Confidential Information is addressed in Paragraph 35 (Data Practices) of the Agreement, as amended in section 2.7 of this PA.

3. Primary Contact:

The primary participating entity contact for this PA is as follows:

Scott Smith, Technology Brokering Services Manager

State of Washington

Department of Information Services

If by US Postal Service: If by Overnight Courier:

PO Box 42445

Olympia, WA 98504

Phone: 360-725-4200

Fax: 360-753-1673

E-mail: ss@dis.wa.gov

2411 Chandler Court SW

Olympia, WA 98502

The primary Contractor contact for this PA is as follows:

James Schroeder

IBM Corporation
4263 Commercial St. SE. Suite 100
Salem, OR 97302

Phone: (503) 399-3825 (TL284)

Fax: (503) 399-3793 (TL284)

E-mail: jschroed@us.ibm.com

4. Servicing Subcontractors:

Only those IBM Business Partners authorized by IBM, as listed on the IBM WSCA/NASPO website, are eligible to support the IBM WSCA/NASPO Master Price Agreement. IBM Business Partners are only authorized to quote to the Purchasing Entity the products and pricing specified by IBM for the WSCA/NASPO Master Price Agreement. Eligible products include ThinkCentre commercial desktop systems, ThinkPad notebooks, ThinkVision Products, IBM options, and Express Models, eServer xSeries and IntelliStation Products.

All Participating Entity orders and payments are to be issued directly to IBM. Each Purchase Order, at the time of order placement, must include the quoting Business Partner's Location ID (LOCID), if a Business Partner has been used, and must identify the WSCA/NASPO Master Price Agreement number. Inclusion of the LOCID on the Purchase Order will result in a fee payment to the Business Partner. Such fee payment will not affect the pricing specified in the WSCA/NASPO Master Price Agreement.

IBM may add or delete eligible Products upon 30 days' written notice, or other agreed upon time period, to the Participating Entity, and written approval by the Participating Entity. IBM may also add or delete eligible Business Partner authorizations at its discretion with 30 days written notice to the Participating Entity. Business Partner changes will be posted to the WSCA/NASPO website 30 days after the date of notification.

All orders are to be issued directly to:

IBM Corporation
Western States Contracting Alliance
WSCA-YE085
7100 Highlands Parkway
Smyrna, GA 30082

And all payments are to be issued to:

IBM Corporation
PO Box 945684
Atlanta, GA 30394-5684

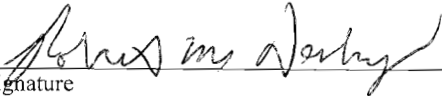
This PA and the Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter hereof and all previous communications, representations, understandings, warranties or agreements, whether oral or written, not contained in this Agreement or PA, or a written amendment hereto, shall not be binding on either party.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this PA and the Agreement, together with its exhibits, shall not be added to or incorporated into this PA or the Agreement and its exhibits, by any purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA and the Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this PA as of the date of execution by both parties below.

APPROVED

State of Washington
Department of Information Services


Signature

Robert M. Deshayé
Print or Type Name

Assistant Director
Title

12-21-04
Date

APPROVED

IBM Corporation


Signature

Michael J. Andrich
Print or Type Name

CLIENT Rep
Title

12/28/04
Date